

Examination Under Oath of Donald Joseph Brata

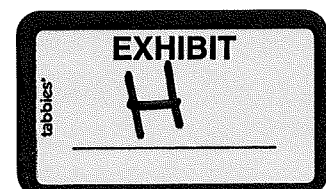
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EXAMINATION UNDER OATH OF DONALD JOSEPH BRATA

Taken at the offices of
Danks, Miller & Cory,
213 South Lamar Street,
Jackson, Mississippi,
on Friday, November 5, 2010,
beginning at approximately 9:40 a.m.

APPEARANCES NOTED HEREIN

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INSURANCE and OLD REPUBLIC NATIONAL
TITLE INSURANCE COMPANY

1 G&B, me, and asked that it be brought through his
2 property, which was situated on Highland Colony
3 Parkway behind Broadmoor Baptist Church up at the
4 top of the hill.

5 Q. And that was Charles Evans?

6 A. Yes. And with most things that
7 happen in Madison County and the City of Madison,
8 you have to go through the proper authorities.
9 And the road was laid out by the City of Madison,
10 and it just didn't happen to go through the
11 property that the Evanses owned. And so that was
12 the only other time I dealt with the Evanses
13 previous to when we entered into this contract to
14 sell the property.

15 Q. Did you ever deal with Charles Evans
16 as an attorney?

17 A. No.

18 Q. All your dealings with him were as
19 a -- as a fellow landowner?

20 A. Correct.

21 Q. Okay. At any point in time, either,
22 you know, before or after the sale, did you deal
23 with Charles Evans as an attorney?

24 A. No.

25 Q. At the time you entered into the

1 contract with Charles Evans, did you know that he
2 was an approved attorney for Mississippi Valley
3 Title?

4 A. No.

5 Q. Had you had any communications with
6 Mississippi Valley Title about Charles Evans --

7 A. No.

8 Q. -- as of the time you signed that
9 contract?

10 A. No.

11 Q. Did you at any point in time inquire
12 from Mississippi Valley of Mr. Evans' -- Charles
13 Evans' status with them?

14 A. No.

15 Q. And when I say "any time," I mean,
16 you know, either before or after the transaction.

17 A. No.

18 Q. Okay. Now, Dewey Hembree is with the
19 McGlinchey Stafford firm, correct?

20 A. Correct.

21 Q. And William Smith is with the
22 Watkins & Eager firm?

23 A. Correct.

24 Q. And both are experienced real estate
25 attorneys, are they not?

1 that the -- at closing, the Evanses were to pay
2 \$5,000 in cash; is that right?

3 A. \$5 million in cash.

4 Q. Excuse me.

5 A. \$5 million in cash.

6 Q. Pardon me.

7 A. Yeah.

8 Q. Okay. Which would be -- you would
9 have -- \$5 million in cash, and \$11 million would
10 be owner financed, correct?

11 A. Correct.

12 Q. All right. You will agree in there
13 that there's nothing in the provisions of
14 paragraph 4 that says that the Evanses couldn't
15 borrow money to come up with the \$5 million?

16 A. Yeah, there's no prohibition in that
17 paragraph.

18 Q. Okay. And do you know of any
19 prohibition in the contract to them borrowing
20 money to close?

21 A. No.

22 Q. Okay. And the understanding was, in
23 paragraph 5, is that once they paid \$5 million,
24 that you would release a certain portion of the
25 property and which would be free and clear of the

1 \$11 million mortgage, correct?

2 A. Correct.

3 Q. And that was done, was it not?

4 A. That was done.

5 Q. You did, in fact, receive \$5 million
6 at closing?

7 A. Yes.

8 Q. Okay. Did the Evanses comply with
9 all of the requirements of the contract that's
10 been marked as Exhibit 3?

11 MR. CORY: Are you talking about at
12 the time of closing?

13 MR. BRABEC: Yes.

14 THE WITNESS: Yes.

15 MR. BRABEC, CONTINUED:

16 Q. Okay. If you would, look at
17 paragraph 11. It's actually on page 4. It
18 says -- it says there, "In the event this
19 transaction fails to close due to wrongful refusal
20 or failure in breach of this contract on the part
21 of the purchaser to close, then in such event,
22 seller's sole remedy shall be to terminate this
23 contract and retain the earnest money." Is that
24 correct?

25 A. Correct.

1 Q. All right. But they did not default,
2 correct?

3 MR. CORY: I think that's a legal
4 question. I mean, he can answer it if he
5 understands it, the context of it.

6 But you can -- you have to declare a
7 default.

8 THE WITNESS: Yeah, I never declared
9 a default. They did not close, as specified, by
10 April 30th, but G&B agreed to keep the contract in
11 force, and eventually the transaction closed
12 July 23rd of 2008.

13 MR. BRABEC, CONTINUED:

14 Q. Okay. Now, under paragraph No. 15,
15 there's Seller's Representations and Warranties?

16 A. Uh-huh. Yes.

17 Q. Okay. And I notice that there are no
18 purchaser's representations or warranties.

19 A. Agreed.

20 Q. Okay. So when you entered into this
21 agreement, there weren't any contingencies or
22 facts that had been represented to you that you
23 felt were important enough to include in the
24 contract?

25 A. Yes. This agreement was presented to

1 us and produced by William Smith.

2 Q. Right. But you had input into this
3 document, correct?

4 A. Correct.

5 Q. And you -- you were represented by
6 very capable counsel?

7 A. Correct.

8 Q. And had there been any warranties or
9 representations that you needed to be included in
10 there, you could have brought that up to Mr. Smith
11 and to the Evanses, correct?

12 A. Correct.

13 Q. But you didn't?

14 A. Correct.

15 Q. And you see paragraph 17, it's an
16 integration clause?

17 A. Yes.

18 Q. And you agreed, just like the Evanses
19 agreed, that this was a fully-integrated contract
20 and that there were no representations made
21 outside of what was actually in the written
22 document?

23 A. Correct.

24 Q. And as we stand here today, were
25 there any representations that were made by the

1 there's not. But that is a legal determination, ,
2 not a determination that this witness can make.
3 So it's not an effort to delay or obstruct. I
4 just don't think he can -- Mr. Brata can tell you
5 that answer.

6 MR. BRABEC: Okay. I'll move on.

7 MR. BRABEC, CONTINUED:

8 Q. At any point in time, did
9 Charles Evans make any representations to G&B
10 about his authority with respect to Mississippi
11 Valley Title?

12 A. No.

13 Q. Okay. At any point in time did
14 Mississippi Valley Title give you any
15 representations concerning Charles Evans'
16 authority with respect to them?

17 A. No.

18 Q. All right. Did you rely on anything
19 that Mississippi Valley Title did to go through
20 with this agreement?

21 A. To go through with the purchase and
22 sale agreement?

23 Q. Yes, sir.

24 A. No.

25 Q. Okay. And as a matter of fact, as of

1 December of 2007, G&B was bound to go through with
2 this agreement at least until March 31st, correct?

3 A. Correct.

4 Q. And then you waived the time
5 provision for closing. So you were obligated to
6 close in July, were you not?

7 A. Correct.

8 MR. CORY: Just for the record, I'm
9 going to object, to the extent that you're calling
10 for legal conclusions. Those are -- he's giving
11 you his opinion. Whether he was legally obligated
12 or not is a far more complex question at that
13 point. So. . .

14 MR. BRABEC, CONTINUED:

15 Q. You understood that you were
16 obligated, right?

17 A. Well, quite frankly, I did not
18 execute any amendments to this agreement, so I
19 don't know if I -- I think I could have stated to
20 Charles, "I've had enough of you," and walked
21 away.

22 Q. Okay.

23 A. Or had enough of William Smith.

24 Q. But you -- you didn't, did you?

25 A. I did not do that.

1 A. No. We'll retract that. *

2 Q. Okay. What about 13? It seems to be
3 just a catchall of --

4 MR. CORY: I think it's -- I think
5 it's already covered -- I mean, if you're able to
6 recover your deficiency judgment and your expenses
7 and costs, that's more of just a -- I assume
8 Richard's just summarizing.

9 THE WITNESS: We'll retract 13.

10 MR. BRABEC: Okay. That's all I've
11 got on the claim form. Let me look and see
12 what --

13 MR. CORY: You want a break or. . .

14 MR. BRABEC: Yeah, why don't we take
15 a break. I don't want to hold y'all up.

16 (OFF THE RECORD.)

17 MR. BRABEC, CONTINUED:

18 Q. Who did the title work on the
19 closing, the sale to Hanover?

20 A. William Smith.. And on the closing
21 statement, I also saw a \$800 fee to a First
22 Guarantee Title Company, which I believe is --
23 William Smith's brother works there.

24 Q. Okay. To your knowledge, did
25 Mississippi Valley do any of the title work on

1 that transaction?

2 A. I have no knowledge of that. I did
3 not interact with anybody at Mississippi Valley
4 Title.

5 Q. Okay. Do you know of any
6 responsibilities that Mississippi Valley took on
7 besides issuing the owner's policy to G&B in
8 connection with your transaction?

9 A. I think they also issued a title
10 policy to Hanover. I saw in the closing statement
11 that Hanover paid 16,000 for title policy.

12 Q. Okay. Did you ever consider getting
13 a lender's policy, since you were going to take a
14 deed of trust on the property?

15 A. I don't recall having a conversation
16 with Hembree regarding that.

17 Q. Okay.

18 MR. CORY: I want to be clear on
19 this, Joe, so it's clear.

20 THE WITNESS: Okay.

21 MR. CORY: Did you -- did you know
22 what type of policy you were getting, or do you
23 specifically remember if they said, We're going to
24 get you an owner's policy, or who said what? I
25 mean, I don't know who said what. Or was it more